

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare-Khammam District - Revision Petition filed by Sri Ramavarapu Laxmipathi S/o Late Satyam R/o Bandarugudem (V) Munuguru (M), Khammam District against the orders of the Additional Agent to Government, Bhadrachalam in CMA No.114/2005 Dated:18-11-2006-Dismissed-Orders-Issued.

SOCIAL WELFARE (LTR-2) DEPARTMENT

G.O.Ms.No. 205

Dated:19-11-2008.

Read the following:

1. From Sri Nanduri Srinivasa Rao, Counsel for the petitioner, Revision Petition Dt:26-12-2006.
2. Government Memo No.15094/LTR2/2006-1 and 2, dt:31-1-2007.
3. From the Additional Agent to Government & PO ITDA, Bhadrachalam CMA No.114/2005 dt:19-5-2007.
4. Government Memo No.15094/LTR2/2006 dt:3-9-2007, 7-11-2007 and 19-3-2008.
5. Government Lr No:15094/LTR-2/2006, dt:7-11-2007 and 19-3-2008.

ORDER:

In the reference 1st read above Sri Ramavarapu Laxmipathi S/o Late Satyam has filed a Revision Petition along with stay petition before the Government against the orders of the Additional Agent to Government, Bhadrachalam in CMA No.114/2005 Dated:18-11-2006 in respect land measuring Acres 01.20 guntas in Sy.No.207, Bandarugudem (V) Munuguru (M), Khammam District. The main grounds urged by the Revision Petitioner in the Revision Petition and written arguments are:

- a. The dispute between the revision petitioner and 4th respondent Bhukya Sankar is civil nature and 1st respondent i.e. Addl.Agent to Govt. & PO ITDA, Bhadrachalam ought to have set aside the impugned order of the 2nd respondent i.e. Special Deputy Collector (TW), Bhadrachalam.
- b. The then Tahsildar, Manuguru issued notice on 29.6.1982 to the revision petitioner under AP Land Encroachment Act which shows that the petitioner is in possession of the schedule property prior to the alleged sale in favour of the 4th respondent under deed dated 8.7.1993 and ought to have declared that the 4th respondent had purchased the land which is not in possession of his vendors Kondru Sammaiah and Kondru Venkateswarlu, legal heirs of the original pattedar Kondru Veeraiah.
- c. The authorities have no jurisdiction to adjudicate and decide validity/genuineness of the document, consequent possession and title of the revision petitioner, who is in possession of the schedule property long prior to commencement of Regulation 1/70.
- d. The constitutional validity of confirming powers by 1st respondent i.e. Addl. Agent to Govt. & PO ITDA is subjudged before the Hon'ble High Court of AP in W.P.No.4660/2005.
- e. When the Hon'ble Authority heard the RP on 27.3.2008, neither the respondents nor their counsels were present on any single occasion, therefore ought to have set exparte and Revision Petition to have allowed as prayed for.
- f. The petitioner is claiming possession under sada sale deed dt.14.6.1962 and that the same was treated by the 3rd respondent i.e. Mandal Revenue Officer, Manuguru as Govt. land and accordingly issued Sec.7 Notice to the petitioner under LE Act and later dropped the proceedings and ought to have appreciated that the petitioner is in possession of the property prior to 8.7.1993 and even till date and ought to have declared that the alleged sale deed dt. 8.7.1993 was executed in favour of 4th respondent i.e. Bhukya Sankar without delivery of possession and therefore the dispute between the petitioner and 4th respondent Bhukya

Sankar is purely civil dispute and not comes within the ambit and scope of Regulation 1/1959.

- g. The 1st and 2nd respondents ought to have considered that there is no transfer of property including the schedule land from the respondent No.4 in favour of Revision petitioner on any day either prior to regulation or after its commencement and on the other hand as the revision petitioner is claiming under sada sale deed dt:14-6-1962, which is prior to commencement of Regulation, ought to have dropped the proceedings under LTR for want of jurisdiction.

2. The brief history of the case is that the case was initiated by the Special Deputy Collector (TW), Khammam and after verification of the documentary evidences of proof produced, he came to a conclusion that -

1. Sri Bhukya Sankar S/o Lumba (ST) lodged complaint before the Special Deputy Collector (TW), Bhadrachalam on 26.12.2003 against the non-tribals 1) Bijja Sagar, 2) Md.Babul Miya, 3) Edari Krishna, 4) Md.Chandpasha, 5) Challa Raju and 6) Laxmipathi stating that the non-tribals were in illegal possession of his land in Sy.No.208 in the extents 0.01.30 and 0.09.25 (total 0.10.45 acs.) situated in Manuguru village and Mandal of Khammam District.
2. The Mandal Revenue Officer, Manuguru in his letter No.B/270/05, dt.3-3-2005 while submitting demarcation report reported that the non-tribal respondents had encroached into the land to an extent of 0.01.20 cents belonging to the tribal petitioner.
3. After perusing the documents and written arguments filed by counsel for respondent No.6 i.e. Lakshmipathi, it was held that the non-tribals had encroached into the land in Sy.No.207 to an extent of 0.01.20 cents belonging to the tribal petitioner Sri Bhukya Sankar S/o Lumba while the balance extent of 0.09¼ cents remained with the tribal petitioner.

Hence the Special Deputy Collector (TW), Khammam dismissed the appeal vide case No.236/2003/MGR, dt:23-4-2005. Aggrieved by the order of the Special Deputy Collector (TW), Sri Ramavarapu Laxmipathi filed an appeal before the Agent to Government, Khammam. The Agent to Government, Khammam having considered all the material facts held that :-

- i. The Appellant stated in the lower court that his father purchased the schedule land during 1962-63 and in occupation of it but did not file any sale agreement. In appeal grounds, he has mentioned that his father purchased the land through sale agreement dated 14-2-1962 but submitted only Photostat of the document which was dated 14-6-1962.
- ii. Alleged sale agreement was an after thought and invented for the purpose of filing appeal. Photostat copy of the document is inadmissible in evidence.
- iii. Pahanies for the crucial period of possession were not produced.
- iv. MRO Manuguru also reported that the respondent encroached into the land in Sy.No.207 to an extent of 0.01.20 cents of tribal respondent Bhukya Sankar.

Hence the Additional Agent to Government has confirmed the orders of the Special Deputy Collector (TW), Bhadrachalam and dismissed the case vide CMA NO.114/2005, dt:18-11-2006.

3. In the reference 2nd read above, the Agent to Government, Paloncha was requested to furnish parawise remarks and case records and the same were furnished in the reference 3rd read above. After examination of the case records, notices were issued to the concerned to attend the hearing of the Revision Petition on 17-9-2007, 20-11-2007 and finally on 27-3-2008. Counsel

for the petitioner was present on 27-3-2008 and written arguments were submitted on 28-4-2008.

4. Government, after careful examination of the records of Lower and appellate authorities, grounds in the Revision Petition, material evidence on record and the written arguments filed by the counsel for the petitioner, held that:

- i. The land under dispute is situated in Bandarugudem agency village and stands registered in the name of a tribal viz., Bhukya Sankar. The revision petitioner is non-tribal occupant. Hence, there is no case of civil nature and clearly attract provisions of LTR.
- ii. Before the lower and appellate authorities, the petitioner contended that the land was purchased by his father through an ordinary sale agreement dt.14.2.1962 but submitted a photostat copy of agreement dt.14.6.1962 which has no evidential value in the eye of law. Now urged in the R.P. that the Mandal Revenue Officer, Manuguru issued notice under L.E. Act on 29.6.1982 which goes to show his possession prior to launching of LTR proceedings, which was neither contested previously nor give any weight to the present case as the same is self-contradictory and that the Mandal Revenue Officer, Manuguru had already reported it as belongs to tribal Bhukya Sankar.
- iii. The counsel for tribal respondent Bhukya Sankar attended before the revision authority on 20.11.2007 and prayed time for submitting written arguments and accordingly submitted written arguments on 26.11.2007. The counsel argued that the sale deed dt.14.6.1962 is only concocted and created for the purpose of LTR and that in the entire revenue records; the name of the revision petitioner is not shown either as owner or possessor. The tribal respondent viz., Bhukya Sankar purchased an extent of Acres 0.13 gts., under a registered sale deed from Kondru Sammaiah and Kondru Venkateswarlu, who are the legal heirs of the original pattedar Kondru Veeraiah.
- iv. The Agent to Govt. Khammam in his order dt. 18.8.2003 in CMA No.7 of 1995 between Kondru Gangamma (wife of late Kondru Nagaiah one of the sons of late Kondru Laxmaiah S/o Kondru Venkaiah, adopted son of original pattedar Kondru Veeraiah) held that *"There is no doubt and as it is evidenced from the execution of documents pending registration that Bhukya Sankar purchased the disputed land for a sale consideration of Rs.1,45,200/- executed by Sri Kondru Sammaiah said to be legal heir of the original pattedar. At the same time, the lower court did not observe the efforts made by Smt.Kondru Gangamma to save the illegal occupation of land. Since inception of LTR proceedings in the matter and the strategy of such a big family members of the late pattedar Sri Kondru Veeraiah and which cannot be relegated, all such members are no more at present and passed away in a way back of this efflux of time and rest are remain by this old tribal woman by name Smt.Kondru Gangamma W/o late Nagaiah and other two tribals, by name Kondru Sammaiah and Kondru Venkateswarlu who are more close relatives. In fact, the respondents 2 & 3 herein might be kid while initiating Land Transfer Regulation provisions in this case by Smt.Kondru Gangamma. Having considered all the material facts, this court feels that the ends of justice would be met only by way of sharing the yields of disputed land and its mense profits among the appellant and the respondents 2 & 3 equally who are the left over persons from the entire family. At the same time the purchase of the disputed land by Sri Bhukya Sankar who is the respondent No.1 herein is hereby regularized under the provisions of LTR Act. Accordingly, the appeal is disposed off."*
- v. Without properly verifying validity/genuineness of the documents before adjudication like in the present case wherein the petitioner claiming ownership through a photostat copy of an ordinary sale agreement said to be executed on 14.6.1962, it cannot be made to establish whether

the case is hit by LTR or not. If the petitioner is in rightful possession and enjoyment over the disputed land much prior to commencement of 1/70, he should have proved the same through valid documentary evidence and the onus of proof with regard to possession and enjoyment of immovable property by Non-Tribals lies with them only, as per the presumption clause encapsulated U/s.3 of LTR. Therefore, the contention of the petitioner that the authorities have no jurisdiction to examine genuineness of the document and question possession prior to 1/70 without any documentary evidence does not stand.

- vi. The Hon'ble High Court in its order dated 9.8.2007 in W.P.No.1241 and 30 other cases confirmed jurisdiction of POs of ITDAs & Addl. Agents to Govt. as Appellate authority in G.O.Ms.No.193 for taking up LTR.

5. Government after careful examination of the case records hereby find no reason to interfere with the orders of the Additional Agent to Government & PO ITDA, Bhadrachalam in CMA No.114/2005, dt:18-11-2006 and accordingly dismiss the Revision Petition.

6. The Additional Agent to Government Bhadrachalam is requested to take necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

A.K.TIGIDI,

Prl. Secretary to Government.

To

The Collector, Khammam District.

(By RPAD with the following records)

1. LTR Case file No.236/2003/MGR pp CFP-238 and NFP-12 total 250 only.
2. CMA No.114/2005 pp CFP-168 and NFP-4 total 172 only.

The Addl.Agent to Government & PO ITDA, Bhadrachalam, Khammam.

The Special Deputy Collector (TW) Khammam District

Sri M.Rajamalla Reddy, advocate,

Plot No.22, Pragathi Nagar, Ramanthapur, Hyderabad.

Sri Ramavarapu Laxmipathi, S/o Late Satyam,

R/o Bandarugudem (V) Munuguru (M), Khammam District.

Sri Bhukya Sanker S/o Lamba,

R/o Bandarugudem (V) Munuguru (M), Khammam District.

Copy to the P.S to M (TW&RAID).

SF / SC

// FOWARDED BY ORDER //

SECTION OFFICER